In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 269

DAVID R. PULLIAM, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner was divorced by his wife in 1956. In satisfaction of his "duty to make provisions for the support of his wife" (R. 4),[1] the divorce court decreed

[1] The parties' rights were governed by Colorado law. 3 Colo. Rev. Stat. § 46-1-5 provides:

"* * * When a divorce has been granted the court may make such order and decree providing for the payment of alimony and maintenance of the wife and minor children or either of them as may be reasonable and just, and may require security to be given for the payment of such alimony, or enforce the payment thereof by execution or imprisonment, or may decree a division of property. * * *"

Upon the death of her husband, an undivorced wife is entitled to one-half of his estate, which she may elect to take against his will. 6 *id.* § 152-2-1.

the conveyance to her of property of the petitioner's having a value $53,000 greater than its cost. Both courts below held that petitioner realized a capital gain in that amount by virtue of the transfer.

This case is controlled by *United States* v. *Davis*, 370 U.S. 65. There the Court held (1) that a husband's transfer of appreciated property to his wife pursuant to a negotiated property settlement incident to a divorce was a taxable "exchange" and (2) that the value of the legal obligations satisfied by the transfer—*i.e.*, the "amount realized" (§ 1001(b), Internal Revenue Code of 1954)—could properly be measured by the value of the property transferred. Here the property settlement was decreed by the court rather than agreed upon by the parties, but that makes this a stronger, not a weaker, case for taxability. In *Davis*, since the wife's asserted marital rights had never been adjudicated, it was necessary to indulge the assumption that the parties had valued those rights as the equal of the property agreed to be given in satisfaction of them. Here, on the other hand, the obligation satisfied by the transfer was liquidated by a decree of the court adjudicating the amount of the husband's property to which the wife was entitled. The decree imposed upon petitioner an obligation to give to his wife property worth $137,870 (R. 8). The satisfaction of that obligation[2] was no less a receipt of $137,870 by petitioner than if the obligation had been stated in terms of money and the same property had then been conveyed in satisfaction of it.

[2] Which, as it happened, occurred simultaneously, since the decree itself operated as a conveyance.

There is in any event no conflict of decisions or other reason for review by this Court. The petition for certiorari should be denied.

Respectfully submitted.

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AUGUST 1964.

U.S. GOVERNMENT PRINTING OFFICE:1964